

APPEAL NO. 022523
FILED NOVEMBER 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 20, 2002. The hearing officer determined that the respondent (carrier) is not relieved of liability for the claimed injury, because the claimed injury did not occur while the appellant (claimant) was in a state of intoxication; and that the date of injury is _____. Notwithstanding those determinations, the hearing officer's order states that the carrier's liability for medical and income benefits for the claimed injury "has not been fully adjudicated" because the carrier disputed compensability on grounds, other than intoxication, in its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21). The claimant appeals this language, asserting that the carrier declined to pursue the remaining grounds for dispute raised in its TWCC-21. The carrier urges affirmance. The hearing officer's determinations that the carrier is not relieved of liability for compensation due to intoxication and that the date of injury is _____ were not appealed and are, therefore, final. Section 410.169.

DECISION

Reversed and a new decision rendered that the carrier is liable for benefits for the claimant's compensable injury of _____.

The following issues were reported out of the benefit review conference (BRC) as unresolved: (1) Did the claimed injury occur while the claimant was in a state of intoxication, thereby relieving the carrier of liability for compensation; and (2) What is the date of injury? As noted above, the hearing officer's determinations on these issues were not appealed by either party. Rather, the claimant appeals language in the hearing officer's order that provides:

ORDER

Because Carrier has denied compensability of Claimant's claimed injury on grounds in addition to the intoxication defense, and because compensability of Claimant's claimed injury has not been fully adjudicated, Carrier's liability, if any, to Claimant for medical and income benefits for the claimed injury of _____, under the Texas Workers' Compensation Act, and the [Texas Workers' Compensation] Commission's Rules, has not been fully adjudicated, and it is so **ORDERED**.

The claimant essentially contends that the carrier waived its right to pursue a course and scope defense in this instance by proceeding to a hearing where only an intoxication defense was raised. We agree. Although, as the hearing officer noted, the carrier contended in its TWCC-21 an alternative defense that the claimant was not

injured in the course and scope of his employment, it chose not to pursue that issue at the hearing. The course and scope issue was not reported out of the BRC as an unresolved issue and the carrier did not seek to add that issue at the hearing. To the contrary, the carrier sought to be relieved of liability pursuant to Section 406.031(1)(A). A determination that the carrier is relieved of liability would have no meaning were it not implicit that an injury in the course and scope had occurred for which the carrier is seeking to avoid liability under an exception.

We have previously applied a waiver doctrine in the absence of specific waiver provisions in the 1989 Act and Commission rules where certain threshold issues were not timely raised and to permit them to be resolved at a later stage of claim processing “would disrupt the orderly and expeditious adjudication and payment of benefits.” See Texas Workers' Compensation Commission Appeal No. 971270, decided August 20, 1997, and the cases cited therein. This case presents such a situation. In this instance, the carrier was required to pursue all of the compensability defenses of which it knew or reasonably should have known at this hearing or lose its right to do so. If we were not to so decide, it would have the effect of permitting piecemeal adjudication of the claim and would make the hearing officer's decision in this case nothing more than an advisory opinion. Issues proceed through the benefit dispute resolution process to determine if the claimant is entitled to medical and income benefits and whether a carrier is liable for such benefits. As it is written, the hearing officer's decision fails to resolve that issue. We hold that the issues of whether an injury occurred in the course and scope of employment and whether the carrier is relieved of liability because the injury occurred while the employee was in a state of intoxication are “so interlinked that to have the latter determined without raising the former will constitute waiver of the former.” Texas Workers' Compensation Commission Appeal No. 950140, decided March 8, 1995. That is, the carrier cannot rely on a course and scope defense raised in its TWCC-21 but not pursued at the hearing to resurrect that defense for a later date where, as here, it proceeded to a hearing and attempted to be relieved of liability for benefits based upon intoxication but failed in that effort.

We reverse the hearing officer's order that the compensability issue “has not been fully adjudicated” and render a new decision that the carrier is liable for medical and income benefits for the claimant's _____, compensable injury.

The true corporate name of the insurance carrier is **UTICA MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD A. MAYER
11910 GREENVILLE AVENUE, SUITE 600
DALLAS, TEXAS 75243-9332.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Veronica Lopez
Appeals Judge